

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 71 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SANKALCHAND JECHANDBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

MR BD DESAI, ADDL.P.P.with for Respondent No.1

MR AVINASH K MANKAD for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 27/06/96

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.B.D.Desai,
learned A.P.P.for respondent No.1 - State and
Mr.A.K.Mankad, learned Advocate for Respondent No.2.
2. This Revision Application has been directed
against the order of issuance of process rendered by the
learned Metropolitan Magistrate,Court No.3 on 15.12.1995
in M.Case No.37 of 1980. It is a sad story of this matter

that since 1980 the matter is at the initial stage and is still required to be sent back to the learned Magistrate.

3. The short facts concerning this case may be noted as under :

It was the case complainant's case that on 29.5.1980 he had gone to Hardwar and returned to Ahmedabad on 3.6.1980. On 10.6.1980 he went with Shaileshbhai Chandulal towards Asarwa and saw doors of his factory in Shed No.60 alleged to be taken on lease by him opened. He found one Lalitbhai Gandhi (accused herein) was sitting. Said Lalitbhao did not permit him entry in the premises and threatened him. Thereafter the complainant went to accused No.2, who also threatened him. He, therefore, submitted an application to Police [[B on 11.6.1980 alleging the offences punishable under Section 341, 380, 453, 454, 109 read with 120 (B) of the I.P.C. The learned Metropolitan Magistrate directed the Sherkotada Police to investigate into the matter u/s.156(3) of the Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as "The Code") and the Police registered the offence on 21.6.1980 as M. Case No.37 of 1980. The police carried out the detailed investigation in respect of complaint and recorded the statement of various persons and collected the documentary evidence. On completion of investigation the Investigating Officer came to the conclusion that the complainant with malafide and malicious intention and on account of enmity relations had lodged false complaint. He, therefore sought "B" summary with prosecution as per his report dated 5.10.1980, which was forwarded as final Report No.117/80 on 8.10.1980. The final report having been submitted in the month of October 1980 did not show any further progress thereafter and the complainant also is stated to have been taken any action till upto 31.7.1986 when he submitted protest petition.

4. Thereafter the learned Metropolitan Magistrate by his order dated 30.10.1987 granted "B" summary with prosecution and the grievance of the complainant was that after submission of protest petition the learned Metropolitan Magistrate did not examine the complainant and did not follow the procedure u/s.200 of the Code. He, therefore, challenged the order in Revision Application No.48 of 1990 before the learned Additional Sessions Judge, Ahmedabad City, who by his order dated 13.6.1990 set aside the order of the learned Metropolitan Magistrate granting "B" Summary with prosecution. The present petitioner challenged the order of the learned Addl. Sessions Judge, Ahmedabad city, before this Court in Criminal Misc. Application No.157/93. This Court (Coram :

K.J.Vaidya, J.) by order dated 17.12.1994 issued following directions :

"In the result, this Misc. Criminal Application is allowed. The impugned order passed by the learned Metropolitan Magistrate, Ahmedabad is quashed and set aside. The matter is remanded to the trial Court with the specific direction to comply with the directions given by the learned Sessions Judge in Criminal Revision Application No.48 of 1990, decided on 13th June 1990. Further, taking into consideration the fact that the Criminal Case is of the year 1980, the learned Magistrate is directed to expedite the proceedings and do needful on or before 31st May, 1995. Rule is made absolute."

5. Thereafter the matter proceeded before the learned Metropolitan Magistrate, who had examined the complainant and three other witnesses, out of whom Mr.Haribhai Ganeshbhai was not a witness named by the complainant and Mr.Jethabhai Amarbhai was also a witness not named by the complainant.

6. It is the submission made on behalf of the petitioner that the learned Metropolitan Magistrate has issued process only on the appreciation of the evidence of the complainant and the aforesaid three witnesses and without considering the evidence collected by the Investigating Officer or without applying his mind to such evidence as also the report of the Investigating Officer.

6. There is no answer to the aforesaid submission of Mr.A.D.Shah, learned Advocate for the petitioner. The only submission made on behalf of the opponent is that if the process is quashed and the learned Magistrate is directed to reconsider the matter, some time limit should be fixed. It is further submitted on behalf of the opponents that the complainant might be permitted to produce documentary evidence before the learned Magistrate in support of his evidence already relied upon by the learned Metropolitan Magistrate.

7. In the facts and circumstances of the case following order is passed :

The impugned order dated 15.12.1995 is hereby quashed and set aside. The order is remanded to the learned Metropolitan Magistrate to decide the same afresh after considering the evidence of the complainant, his three witnesses examined by the learned Metropolitan Magistrate, the evidence recorded by the Investigating Officer, the report of the Investigating Officer and thereafter the documents that may be produced by the complainant before the learned Magistrate. The learned

Metropolitan Magistrate shall decide the matter afresh within a period of six months from the date of receipt of writ of this direction.

Rule made absolute in the aforesaid terms.

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